

<input checked="" type="checkbox"/> FILED	RECEIVED
<input type="checkbox"/> ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
MAY - 7 2018	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY: _____	DEPUTY

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

BARRY C. ROWE,

Plaintiff,

Case No. 3:16-CV-0535-MMD (VPC)

**ORDER**

v.

ROMEO ARANAS, et al.,

Defendants.

Before the court are defendants' two motions for leave to file medical records under seal (ECF Nos. 28 & 41).

In these motions, defendants seek to file under seal exhibits containing plaintiff's medical records. The exhibits are filed in connection with a motion for summary judgment and an opposition to a motion summary judgment.

"Historically, courts have recognized a general right to inspect and copy public records and documents, including judicial records and documents." *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted). "Throughout our history, the open courtroom has been a fundamental feature of the American judicial system. Basic principles have emerged to guide judicial discretion respecting public access to judicial proceedings. These principles apply as well to the determination of whether to permit access to information contained in court documents because court records often provide important, sometimes the only, bases or explanations for a court's decision." *Oliner v. Kontrabecki*, 745 F.3d 1024, 1025 (9th Cir. 2014) (quoting *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983)).

Documents that have been traditionally kept secret, including grand jury transcripts and warrant materials in a pre-indictment investigation, come within an exception to the general right

1 of public access. See *Kamakana*, 447 F.3d at 1178. Otherwise, “a strong presumption in favor of  
2 access is the starting point.” *Id.* (internal quotation marks and citation omitted). “The presumption  
3 of access is ‘based on the need for federal courts, although independent—indeed, particularly  
4 because they are independent—to have a measure of accountability and for the public to have  
5 confidence in the administration of justice.’” *Center for Auto Safety v. Chrysler Group, LLC*, 809  
6 F.3d 1092, 1096 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016) (quoting *United States  
v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley Broad Co. v. U.S. Dist. Court-  
D. Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

9 There are two possible standards a party must address when it seeks to file a document  
10 under seal: the compelling reasons standard or the good cause standard. See *Center for Auto Safety*,  
11 809 F.3d at 1096-97. Under the compelling reasons standard, “a court may seal records only when  
12 it finds ‘a compelling reason and articulate[s] the factual basis for its ruling, without relying on  
13 hypothesis or conjecture.’” *Id.* (quoting *Kamakana*, 447 F.3d at 1179). “The court must then  
14 ‘conscientiously balance[ ] the competing interests of the public and the party who seeks to keep  
15 certain judicial records secret.’” *Id.* “What constitutes a ‘compelling reason’ is ‘best left to the  
16 sound discretion of the trial court.’” *Id.* (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599  
17 (1978)). “Examples include when a court record might be used to ‘gratify private spite or promote  
18 public scandal,’ to circulate ‘libelous’ statements, or ‘as sources of business information that might  
19 harm a litigant’s competitive standing.’” *Id.* (quoting *Nixon*, 435 U.S. at 598-99).

20 *Center for Auto Safety* described the good cause standard, on the other hand, as the  
21 exception to public access that had been applied to “sealed materials attached to a discovery motion  
22 unrelated to the merits of a case.” *Id.* (citing *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*,  
23 307 F.3d 1206, 1213-14 (9th Cir. 2002)). “The ‘good cause language comes from Rule 26(c)(1),  
24 which governs the issuance of protective orders in the discovery process: ‘The court may, for good  
25 cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or  
26 undue burden or expense.’” *Id.* (citing Fed. R. Civ. P. 26(c)).

27 The Ninth Circuit has clarified that the key in determining which standard to apply in  
28 assessing a motion for leave to file a document under seal is whether the documents proposed for

1 sealing accompany a motion that is “more than tangentially related to the merits of a case.” *Center*  
2 *for Auto Safety*, 809 F.3d at 1101. If that is the case, the compelling reasons standard is applied. If  
3 not, the good cause standard is applied.

4 Here, defendants seek to file exhibits under seal in connection with their motion for  
5 summary judgment and in opposition to plaintiff’s motion for summary judgment which are  
6 unquestionably “more than tangentially related to the merits of a case.” Therefore, the compelling  
7 reasons standard applies.

8 This court, and others within the Ninth Circuit, have recognized that the need to protect  
9 medical privacy qualifies as a “compelling reason” for sealing records. See, e.g., *San Ramon*  
10 *Regional Med. Ctr., Inc. v. Principal Life Ins. Co.*, 2011 WL89931, at \*n.1 (N.D. Cal. Jan. 10,  
11 2011); *Abbey v. Hawaii Employers Mut. Ins. Co.*, 2010 WL4715793, at \* 1-2 (D. HI. Nov. 15,  
12 2010); *G. v. Hawaii*, 2010 WL 267483, at \*1-2 (D.HI. June 25, 2010); *Wilkins v. Ahern*, 2010  
13 WL3755654 (N.D. Cal. Sept. 24, 2010); *Lombardi v. TriWest Healthcare Alliance Corp.*, 2009  
14 WL 1212170, at \* 1 (D.Ariz. May 4, 2009). This is because a person’s medical records contain  
15 sensitive and private information about their health. While a plaintiff puts certain aspects of his  
16 medical condition at issue when he files an action alleging deliberate indifference to a serious  
17 medical need under the Eighth Amendment, that does not mean that the entirety of his medical  
18 records filed in connection with a motion (which frequently contain records that pertain to  
19 unrelated medical information) need be unnecessarily broadcast to the public. In other words, the  
20 plaintiff’s interest in keeping his sensitive health information confidential outweighs the public’s  
21 need for direct access to the medical records.

22 Here, the referenced exhibits contain plaintiff’s sensitive health information, medical  
23 history, and treatment records. Balancing the need for the public’s access to information regarding  
24 plaintiff’s medical history, treatment, and condition against the need to maintain the confidentiality  
25  
26  
27  
28

1 of plaintiff's medical records weighs in favor of sealing these exhibits. Therefore, defendants'  
2 motions (ECF Nos. 28 &41) are **GRANTED**.

3 **IT IS SO ORDERED.**

4  
5 DATED: May 7, 2018.  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



The image shows a handwritten signature in black ink, appearing to read "Valerie P. Polak". Below the signature, the text "UNITED STATES MAGISTRATE JUDGE" is printed in a standard font, indicating the title of the signatory.